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FINNEGAN, HENDERSON, FARABOW,
GARRETT AND DUNNER
1300 I STREET, N.W.
WASHINGTON, DC 20005-3315

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In re Application of
Luc Montagnier et al.
Application No. 08/067,148
Filed: May 26, 1993
Docket No. 03495.0004-04

SPECIAL PROGRAMS OFFICE
DAC FOR PATENTS

ON PETITION

This is a decision on the petition filed August 28, 1998, which is being treated as: (1) a petition requesting that the holding of abandonment in the above-identified application be withdrawn; and (2) a renewed petition under 37 CFR 1.182 requesting that the terminal disclaimer submitted on May 12, 1994 be withdrawn.

The petition requesting that the holding of abandonment in the above-identified application be withdrawn is **GRANTED**.

The petition under 37 CFR 1.182 requesting that the terminal disclaimer submitted on May 12, 1994 be withdrawn is **GRANTED**.

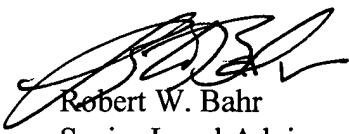
A review of the file record of the above-identified application reveals that petitioners timely filed a submission under 37 CFR 1.129(a) to continue prosecution of the above-identified application. Accordingly, the holding of abandonment (and consequent mailing of a Notice of Abandonment on August 19, 1998) was in error and is hereby **vacated**.

A review of the Office action of March 3, 1998 reveals that claims in the above-identified application stand rejected over certain claims of U.S. Patent No. 5,217,861 on the basis of judicially-created double patenting. See Office action of March 3, 1998 at 4. Thus, the Patent and Trademark Office is not relying upon the terminal disclaimer submitted on May 12, 1994 (disclaiming any term that would extend beyond the term of U.S. Patent No. 5,217,861) in considering the patentability of the claims pending in the above-identified application.

Therefore, the instant request to withdraw the terminal disclaimer submitted on May 12, 1994 (over U.S. Patent No. 5,217,861) is **granted**. See MPEP 1490.

Telephone inquiries concerning this decision should be directed to the undersigned at (703) 305-9282.

The application file is being forwarded to Technology Center 1600 for processing the withdrawal of the terminal disclaimer filed on May 12, 1994 and for consideration of the reply filed June 3, 1998.



Robert W. Bahr
Senior Legal Advisor
Special Program Law Office
Office of the Deputy Assistant Commissioner
for Patent Policy and Projects